

E-Filed 10/15/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PHONG K. NGUYEN,
Petitioner,

No. C 10-3191 RS (PR)

ORDER STAYING PETITION

v.

A. HEDGPETH, Warden,
Respondent.

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. The petition challenges convictions on eight counts of forcible lewd acts with a minor received in 2006 in an Alameda County Superior Court. The petition contains two claims petitioner asserts have been exhausted. Petitioner now moves for a stay of the petition while he exhausts two other claims in the state courts. (*See* Docket No. 1.)

A federal district court has discretion to hold a fully exhausted petition in abeyance pending exhaustion of other claims. *See Calderon v. United States Dist. Court (Taylor)*, 134 F.3d 981, 987–88 (9th Cir. 1998). Granting a stay is appropriate where there is no intention on the part of the petitioner to delay or harass and in order to avoid piecemeal litigation. *Id.* at 988 n. 11.

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1 Here, petitioner has shown good cause for a stay. Specifically, petitioner has stated
2 that the unexhausted claims are pending in state court. (The Court makes no comment at this
3 time on whether these unexhausted claims will in fact be cognizable on, or timely-filed for
4 purposes of, federal habeas review. Such a determination will be made when petitioner
5 amends his petition to add the newly-exhausted claims.) It appears also that petitioner has
6 not engaged in dilatory tactics. Under such circumstances, petitioner's motion for a stay is
7 GRANTED.

8 Nothing further will take place in this action until the Court decides further action is
9 appropriate, or until petitioner exhausts the unexhausted claims and, within thirty days of
10 doing so, moves to reopen this action, moves to lift the stay, and amend his petition to add
11 the new claims.

12 The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of
13 this action.

14 **IT IS SO ORDERED.**

15 DATED: October 14, 2010


RICHARD SEEBORG
United States District Judge